

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**



IN RE:

Swadener Investment Properties, LLC.,

Debtor-in-Possession.

**Case No. 11-10322-M
Chapter 11**

**ORDER AUTHORIZING USE OF CASH COLLATERAL
AND GRANTING REPLACEMENT LIENS**

On March 7, 2011, Swadener Investment Properties, LLC (“SIP”) filed its Motion for Authority to Use Cash Collateral, Grant Replacement Liens as Adequate Protection, and Notice of Opportunity for Hearing (the “Motion”). Objections to the Motion were filed by NBC Bank (“NBC”) and Valley National Bank (“VNB”). After consideration of the Motion, the Objections, and statements of counsel, this Court finds as follows:

1. SIP filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code on February 18, 2011; and since such date has continued in possession of its property and operation of its business as Debtor-in-Possession.

2. Notice of the Motion was mailed to all parties in interest on March 7, 2011 as evidenced by the Certificate of Service attached to the Motion. Pursuant to the Motion, objections were to be filed by March 24, 2011.

3. The Objections have been withdrawn as they have been resolved with the entry of this Order.

4. SIP owns the following commercial properties:

a. Northeast Plaza, 1116-1150 E. Garnett, Tulsa, Oklahoma 74112

- b. 2800 Center, 2800 E. Skelly Dr., Tulsa, Oklahoma 74105
- c. Remington Tower, 5810 E. Skelly Dr., Tulsa, Oklahoma 74135
- d. 2600 Center, 2600 E. Skelly Dr., Tulsa, Oklahoma 74105
- e. 2700 Center, 2761 E. Skelly Dr., Tulsa, Oklahoma 74105

(the “Commercial Buildings”).

5. SIP leases space in the Commercial Buildings to a variety of tenants.

6. SIP believes and Valley National Bank and NBC Bank assert that Valley National Bank and NBC hold first mortgages recorded in the offices of the Tulsa County Clerk on the Commercial Buildings owned by SIP, summarized below:

Mortgage Holder	Mortgage	Property Description	Amount of Mortgage	Value of Collateral
NBC Bank	1 st Mortgage	NE Plaza	2,616,893.25	3,656,900.00
Ray Bagwell	2 nd Mortgage	NE Plaza	591,585.79	
NBC Bank	1 st Mortgage	2800 Center	1,289,824.91	1,988,500.00
NBC Bank	2 nd Mortgage	2800 Center	36,410.99	
Valley National Bank	1 st Mortgage	Remington Tower	4,366,451.10	6,000,000.00
Valley National Bank	1 st Mortgage	2600 Center and 2700 Center	2,052,881.49	2,824,000.00
Regent Bank	2 nd Mortgage	2600 Center and 2700 Center	135,779.00	

7. For the purposes of this Order, SIP contends that:

- a. SIP was not in default upon the commencement of this case,
- b. the mortgages granted to Valley National Bank and NBC Bank include Assignment of Rent clauses,
- c. those rents collected by SIP may constitute cash collateral of Valley National Bank and NBC Bank.

8. Valley National Bank and NBC Bank consented to SIP's use of cash collateral through March 31, 2011.

9. SIP seeks use of cash collateral pursuant to 11 U.S.C. Section 363(c)(4) and F.R.Bankr.P. 4001(b); and proposes adequate protection to Valley National Bank and NBC Bank to the extent it uses cash collateral in the form of a replacement lien pursuant to 11 U.S.C. Section 361(2).

10. Notice and opportunity for hearing have been given to the extent required for entry of this Order.

11. Attached as Exhibit "A" is a budget of SIP's revenues and expenses for the period of April 1, 2011 to September 30, 2011.

12. SIP contends that it is necessary to use cash collateral in order to continue present business operations. SIP requires funds to pay post petition wages, insurance, utilities, repair and maintenance expenses, and other operating expenses in order to continue present operations and to maintain and preserve the bankruptcy estate. Without authorization to use cash collateral, SIP's continued business operations would cease, tenants would vacate the Commercial Buildings, and the value of the Commercial Buildings would decrease – causing immediate and irreparable harm to SIP, SIP's creditors, and the bankruptcy estate.

13. Valley National Bank and NBC Bank are entitled to certain protections as set forth in this Agreed Order. SIP has agreed to provide Valley National Bank and NBC Bank with a replacement lien in and to the future rents of SIP pursuant to 11 U.S.C. Section 361(2) to the extent SIP uses cash collateral.

14. SIP shall be allowed a variance of ten percent (10%) on each budgeted item in Exhibit "A". Furthermore, to the extent an expense is not fully used during a particular month, that unused portion shall carry forward to the next month.

15. Included within the budget is an estimate of the projected fees owed to the United States Trustee. The rental income received equaling the amount of any fee owed to the United States Trustee is not subject to the replacement lien granted to Valley National Bank and NBC Bank.

16. From the excess funds generated from SIP's monthly operations, there shall be the sum of \$7,000.00 set aside for the payment of professional fees in the event an Unsecured Creditors Committee is appointed.

17. SIP's use of cash collateral as set forth in Exhibit "A" is in the best interests of SIP, Valley National Bank, NBC Bank, and the remaining creditors of this estate.

18. Nothing in this Order shall be construed as an agreement on the part of NBC and VNB with respect to their treatment in the Chapter 11 Plan of Reorganization to be filed by SIP.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that SIP is authorized to use cash collateral for the payment of certain operating expenses as set forth in the attached Exhibit "A" from April 1, 2011 through September 30, 2011.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a variance of ten percent (10%) is allowed on each budgeted expense item found in Exhibit "A". Furthermore, to the extent an expense is not fully used during a particular month, that unused portion shall carry forward to the next month.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that included within the attached Exhibit "A" is an estimate of the projected fees owed to the United States Trustee. The rental income received equaling the amount of any fee owed to the United States Trustee is not subject to the replacement lien granted to Valley National Bank and NBC Bank.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that from the excess funds generated from SIP's monthly operations, there shall be the sum of \$7,000.00 set aside for the payment of professional fees in the event an Unsecured Creditors Committee is appointed.

IT IF FURTHER ORDERED, ADJUDGED AND DECREED that Valley National Bank and NBC Bank are granted replacement liens in and to the future rents of SIP pursuant to 11 U.S.C. Section 362(2) to the extend SIP uses cash collateral.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that replacement liens granted Valley National Bank and NBC Bank in and to the future rents of SIP shall be deemed created and perfected without the necessity of the execution, filing or recording of any documents otherwise required under bankruptcy law for the creation or perfection of security interests and liens.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SIP shall make its books and records available to Valley National Bank and NBC Bank for purposes of audit on a regular and routine basis during regular business hours or such other time as conveniently arranged with SIP. Any such review of SIP's books and records shall not unreasonably interfere with SIP's business operations.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that SIP shall continue to maintain insurance with respect to all of the Commercial Buildings for the purposes and in the amounts maintained by SIP.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Valley National Bank and NBC Bank shall be granted full access to the Commercial Buildings during all reasonable business hours for purposes of inspection and appraisal.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the automatic stay pursuant to 11 U.S.C. Section 362 is modified to the extent and only to the extent necessary to permit the actions and events set forth in this Agreed Order to occur and/or be taken by Valley National Bank and NBC Bank.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Agreed Order is not deemed, and shall not constitute, a waiver of any and all rights, claims or defenses of SPI or Valley National Bank and NBC Bank.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that nothing in this Order shall be construed as an agreement on the part of NBC and VNB with respect to their treatment in the Chapter 11 Plan of Reorganization to be filed by SIP.

Dated this 29th day of March, 2011.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Terrence L. Michael", is written over a horizontal line.

TERRENCE L. MICHAEL, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

APPROVED AS TO CONTENT AND FORM:

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Budget for April 1, 2011 through April 30, 2011
Swadener Investment Properties, LLC

Revenue

2600 Center	10,913.00
2700 Center	5,861.84
2800 Center	15,536.33
Remington Tower	47,167.42
Northeast Plaza	<u>30,798.90</u>
	110,277.49

Expenses

Payroll 4/1/2011	9,750.00
Payroll 4/15/2011	9,750.00
Payroll 4/29/11	9,750.00
PSO	22,100.00
ONG/Okla Energy	500.00
COT	3,000.00
Travelers	3,026.00
Aetna	1,750.00
Witt-Remington land lease	10,800.00
Stonetrust-WC	750.00
Source One Janitorial	6,150.00
Sonitrol/Stanley Security	310.00
LD Container Svs	285.00
National Waste	175.00
Answer Phone	130.00
ATT	500.00
Ikon (copier)	0.00
Pitney Bowes Equipment	0.00
TPD (plant lease)	337.08
Pest Control	0.00
Cowan Landscape	2,550.00
Air Expert	300.00
Certified Labs (hvac)	320.09
Mac Fire Systems monitoring	162.00
Quest Elevator	1,833.40
John Todd-2600 land lease	2,761.00
Cox	39.95
Cintas	25.00
Office Supplies	150.00
Audiomatrix	105.00
Nobox (website fee)	15.00
Court fees estimate	1,625.00
Kansas City Life Insurance	450.00
Professional Dues (broker's lic)	235.00

Auto Fuel	150.00
Postage/FedEX	250.00
Payroll reporting fees	180.00
Legal Fees	500.00
Maintenance petty cash	100.00
Auto Maintenance	50.00
Maintenance uniforms	200.00
HVAC Maintenance/Repair	6,300.00
Plumbing Repair	600.00
Electrical Maintenance/Repair	250.00
General Maintenance/Repairs	4,400.00
Tenant Improvements	0.00
Fire Systems Repair	500.00
Fire Systems Inspections	0.00
Snow Removal	0.00
Roof repairs	<u>750.00</u>

103,864.52

Net

6,412.97

Budget for May 1, 2011 through May 31, 2011
Swadener Investment Properties, LLC

Revenue

2600 Center	10,913.00
2700 Center	5,861.84
2800 Center	15,536.33
Remington Tower	47,218.42
Northeast Plaza	<u>30,798.90</u>
	110,328.49

Expenses

Payroll 5/13/11	9,750.00
Payroll 5/27/11	9,750.00
PSO	19,585.00
ONG/Okla Energy	350.00
COT	2,350.00
Travelers	3,026.00
Aetna	1,750.00
Witt-Remington land lease	10,800.00
Stonetrust-WC	750.00
Source One Janitorial	6,150.00
Sonitrol/Stanley Security	310.00
LD Container Svs	285.00
National Waste	175.00
Answer Phone	100.00
ATT	498.00
Ikon (copier)	0.00
Pitney Bowes Equipment	0.00
TPD (plant lease)	337.08
Pest control	250.00
Cowan Landscape	2,550.00
Air Expert	300.00
Certified Labs (hvac)	320.09
Mac Fire Systems	162.00
Quest Elevator	1,833.40
John Todd-2600 land lease	2,761.00
Yardi software fee (annual)	0.00
Cox	0.00
Cintas	25.00
Office Supplies	0.00
Audiomatrix	105.00
Nobox (website fee)	15.00
Court fees estimate	1,625.00
Lincoln National Life Insurance	812.00
Professional Dues (broker's lic)	570.00

Auto Fuel	150.00
Postage	250.00
Payroll reporting fees	180.00
Legal Fees	500.00
Maintenance petty cash	100.00
Auto Maintenance	50.00
Maintenance uniforms	0.00
HVAC Maintenance	9,500.00
Plumbing Repair	600.00
Electrical Maintenance/Repair	0.00
General Maintenance/Repairs	3,725.00
Tenant Improvements	4,000.00
Fire Systems Repair	0.00
Fire Systems Inspections	0.00
Snow Removal	0.00
Roof repairs	<u>1,000.00</u>

97,349.57

Net

12,478.92

Budget for June 1, 2011 through June 30, 2011
Swadener Investment Properties, LLC

Revenue

2600 Center	10,913.00
2700 Center	5,861.84
2800 Center	15,536.33
Remington Tower	47,218.42
Northeast Plaza	<u>30,798.90</u>
	110,328.49

Expenses

Payroll 6/10/11	9,750.00
Payroll 6/24/11	9,750.00
PSO	24,000.00
ONG/Okla Energy	400.00
COT	2,950.00
Travelers	3,026.00
Aetna	1,750.00
Witt-Remington land lease	10,800.00
Stonetrust-WC	750.00
Source One Janitorial	6,150.00
Sonitrol/Stanley Security	310.00
LD Container Svs	285.00
National Waste	175.00
Answer Phone	100.00
ATT	498.00
Ikon (copier)	0.00
Pitney Bowes Equipment	0.00
TPD (plant lease)	337.08
Pest control	0.00
Cowan Landscape	2,550.00
Air Expert	300.00
Certified Labs (hvac)	320.09
Mac Fire Systems	162.00
Quest Elevator	1,833.40
John Todd-2600 land lease	2,761.00
Yardi software fee (annual)	0.00
Cox	0.00
Cintas	25.00
Office Supplies	0.00
Audiomatrix	105.00
Nobox (website fee)	15.00
Court fees estimate	1,625.00
Kansas City Life Insurance	435.00
Professional Dues (broker's lic)	235.00

Auto Fuel	150.00
Postage	250.00
Payroll reporting fees	180.00
Legal Fees	0.00
Maintenance petty cash	100.00
Auto Maintenance	50.00
Maintenance uniforms	0.00
HVAC Maintenance	8,500.00
Plumbing Repair	600.00
Electrical Maintenance/Repair	300.00
General Maintenance/Repairs	4,200.00
Tenant Improvements	3,000.00
Fire Systems Repair	0.00
Fire Systems Inspections	0.00
Snow Removal	0.00
Roof repairs	<u>1,000.00</u>

99,757.57

Net**10,570.92**

Budget for July 1, 2011 through July 31, 2011
Swadener Investment Properties, LLC

Revenue

2600 Center	10,913.00
2700 Center	5,861.84
2800 Center	15,536.33
Remington Tower	47,218.42
Northeast Plaza	<u>30,798.90</u>
	110,328.49

Expenses

Payroll 7/8/11	9,750.00
Payroll 7/22/11	9,750.00
PSO	23,300.00
ONG/Okla Energy	400.00
COT	3,150.00
Travelers	0.00
Aetna	1,750.00
Witt-Remington land lease	10,800.00
Stonetrust-WC	750.00
Source One Janitorial	6,150.00
Sonitrol/Stanley Security	310.00
LD Container Svs	285.00
National Waste	175.00
Answer Phone	100.00
ATT	498.00
Ikon (copier)	0.00
Pitney Bowes Equipment	0.00
TPD (plant lease)	337.08
Pest control	0.00
Cowan Landscape	2,550.00
Air Expert	300.00
Certified Labs (hvac)	320.09
Mac Fire Systems	162.00
Quest Elevator	1,833.40
John Todd-2600 land lease	2,761.00
Yardi software fee (annual)	0.00
Cox	0.00
Cintas	25.00
Office Supplies	0.00
Audiomatrix	105.00
Nobox (website fee)	15.00
Court fees estimate	1,625.00
Lincoln National Life Insurance	0.00
Professional Dues (broker's lic)	235.00

Auto Fuel	150.00
Postage	250.00
Payroll reporting fees	180.00
Legal Fees	500.00
Maintenance petty cash	100.00
Auto Maintenance	50.00
Maintenance uniforms	0.00
HVAC Maintenance	9,300.00
Plumbing Repair	600.00
Electrical Maintenance/Repair	300.00
General Maintenance/Repairs	4,500.00
Tenant Improvements	5,000.00
Fire Systems Repair	0.00
Fire Systems Inspections	3,000.00
Snow Removal	0.00
Roof repairs	<u>1,000.00</u>

101,366.57

Net

8,961.92

Budget for August 1, 2011 through August 31, 2011
Swadener Investment Properties, LLC

Revenue

2600 Center	10,913.00
2700 Center	5,861.84
2800 Center	15,536.33
Remington Tower	47,218.42
Northeast Plaza	<u>30,798.90</u>
	110,328.49

Expenses

Payroll 8/5/11	9,750.00
Payroll 8/19/11	9,750.00
PSO	28,900.00
ONG/Okla Energy	400.00
COT	3,300.00
Travelers	0.00
Aetna	1,750.00
Witt-Remington land lease	10,800.00
Stonetrust-WC	750.00
Source One Janitorial	6,150.00
Sonitrol/Stanley Security	310.00
LD Container Svs	285.00
National Waste	175.00
Answer Phone	100.00
ATT	498.00
Ikon (copier)	0.00
Pitney Bowes Equipment	0.00
TPD (plant lease)	337.08
Pest control	0.00
Cowan Landscape	2,550.00
Air Expert	300.00
Certified Labs (hvac)	320.09
Mac Fire Systems	162.00
Quest Elevator	1,833.40
John Todd-2600 land lease	2,761.00
Yardi software fee (annual)	0.00
Cox	0.00
Cintas	25.00
Office Supplies	0.00
Audiomatrix	105.00
Nobox (website fee)	15.00
Court fees estimate	1,625.00
Lincoln National Life Insurance	812.00
Professional Dues (broker's lic)	235.00

Auto Fuel	150.00
Postage	250.00
Payroll reporting fees	180.00
Legal Fees	500.00
Maintenance petty cash	100.00
Auto Maintenance	50.00
Maintenance uniforms	0.00
HVAC Maintenance	8,700.00
Plumbing Repair	600.00
Electrical Maintenance/Repair	250.00
General Maintenance/Repairs	4,200.00
Tenant Improvements	5,000.00
Fire Systems Repair	0.00
Fire Systems Inspections	0.00
Snow Removal	0.00
Roof repairs	<u>0.00</u>

103,978.57

Net

6,349.92

Budget for September 1, 2011 through September 30, 2011
Swadener Investment Properties, LLC

Revenue

2600 Center	10,913.00
2700 Center	5,861.84
2800 Center	15,536.33
Remington Tower	47,218.42
Northeast Plaza	<u>30,798.90</u>
	110,328.49

Expenses

Payroll 9/2/11	9,750.00
Payroll 9/16/11	9,750.00
Payroll 9/30/11	9,750.00
PSO	27,100.00
ONG/Okla Energy	250.00
COT	3,600.00
Travelers	0.00
Aetna	1,750.00
Witt-Remington land lease	10,800.00
Stonetrust-WC	750.00
Source One Janitorial	6,150.00
Sonitrol/Stanley Security	310.00
LD Container Svs	285.00
National Waste	175.00
Answer Phone	100.00
ATT	498.00
Ikon (copier)	0.00
Pitney Bowes Equipment	0.00
TPD (plant lease)	337.08
Pest control	0.00
Cowan Landscape	2,550.00
Air Expert	300.00
Certified Labs (hvac)	320.09
Mac Fire Systems	162.00
Quest Elevator	1,833.40
John Todd-2600 land lease	2,761.00
Yardi software fee (annual)	0.00
Cox	0.00
Cintas	25.00
Office Supplies	0.00
Audiomatrix	105.00
Nobox (website fee)	15.00
Court fees estimate	1,625.00
Kansas City Life Insurance	435.00

Professional Dues (broker's lic)	235.00
Auto Fuel	150.00
Postage	250.00
Payroll reporting fees	180.00
Legal Fees	500.00
Maintenance petty cash	100.00
Auto Maintenance	50.00
Maintenance uniforms	0.00
HVAC Maintenance	6,150.00
Plumbing Repair	475.00
Electrical Maintenance/Repair	250.00
General Maintenance/Repairs	3,250.00
Tenant Improvements	2,000.00
Fire Systems Repair	0.00
Fire Systems Inspections	0.00
Snow Removal	0.00
Roof repairs	<u>0.00</u>

105,076.57

Net**8,726.92**